

**BEFORE THE
BOARD OF PODIATRIC MEDICINE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

**In the Matter of the Petition for Penalty)
Relief/Termination of Probation of:)
NGUYEN KY, D.P.M.)
Doctor of Podiatric Medicine)
License No. E 4689)

Petitioner.)**

File No. 500-2016-000362

DECISION AND ORDER

The attached Proposed Decision of the Administrative Law Judge is hereby accepted and adopted by the Board of Podiatric Medicine of the Department of Consumer Affairs, State of California as its Decision in the above-entitled matter.

This Decision shall become effective at 5:00 p.m. on January 20, 2017

DATED December 22, 2016.

BOARD OF PODIATRIC MEDICINE



John Y. Cha, D.P.M., President

BEFORE THE
BOARD OF PODIATRIC MEDICINE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition for Penalty
Relief/Termination of Probation of:

NGUYEN KY,¹ DPM,

Podiatric Medicine License No. E 4689

Petitioner.

Case No. 500-2016-000362

OAH No. 2016080962

PROPOSED DECISION

Administrative Law Judge Diane Schneider, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on September 8, 2016.

Keith Shaw, Deputy Attorney General, represented the People of the State of California.

Petitioner Nguyen Ky, DPM, was present and represented himself.

The record closed and the matter was submitted on September 8, 2016.

FACTUAL FINDINGS

Background

1. Petitioner Nguyen Ky holds Doctor of Podiatric Medicine (DPM) License No. E 4689. Petitioner has been licensed since August 14, 2006. His license has an expiration date of January 31, 2018.

2. Petitioner's license was placed on probation by the California Board of Podiatric Medicine (Board) pursuant to a Stipulated Settlement and Disciplinary Order (Order) that became effective on August 14, 2013. The underlying Accusation and Petition to Revoke Probation charged that petitioner had committed acts of gross negligence and

¹ Petitioner's name is misstated in places in the record. His name is Nguyen Ky, not Ky Nguyen.

repeated negligent acts in relation to one patient. For the purpose of resolving the charges against him, petitioner admitted that complainant could establish a prima facie case for the charges contained in the Accusation and Petition to Revoke Probation. Petitioner also agreed that his license would be revoked, the revocation would be stayed, and he would be placed on probation for five years, upon various terms and conditions.

3. The terms of petitioner's probation included completion of a clinical training program and practice monitoring as well payment of cost recovery and submission of quarterly reports. Petitioner has served three years of his probationary period. He signed a Petition for Penalty Relief, Modification of Probation/Termination of Probation, on March 28, 2016.

Probation compliance

4. Petitioner completed a clinical training program through the Physician Assessment and Clinical Education Program at the University of California, San Diego School of Medicine (PACE). Petitioner's program was offered at the Western University College of Podiatric Medicine and completed on May 2, 2014.

5. Petitioner's probation monitor, Robert Sherer, unequivocally supports petitioner's request to terminate his probation. In an investigation report dated June 24, 2016, Sherer reports that petitioner has been in compliance with all of the terms and conditions of his probation. He also reports that petitioner has completed continuing education classes and has not received additional complaints or discipline.

6. Petitioner's practice monitor, Jack L. Boris, DPM, recommends early termination of petitioner's probation because petitioner no longer requires monitoring. In the three years that Dr. Boris has monitored petitioner's practice he has seen petitioner grow and mature. Dr. Boris relayed to Sherer that petitioner's "work is excellent and there are absolutely [no] red flags in his practice." In a letter to the Board dated April 15, 2016, he states that petitioner "has been honest and maintained a strong ethical standard in the evaluation and treatment of his patients."

7. Petitioner submitted recommendations from the following individuals:

a. Sally Pham, DPM, submitted a recommendation letter dated March 17, 2016, in which she praises petitioner for the excellent skill and care that he provides to his patients.

b. Christian Foglar, M.D., wrote a letter dated June 15, 2016, in support of petitioner. Dr. Foglar commends petitioner for his technical expertise as well as his use of minimally invasive and cost effective techniques. He also notes that petitioner has provided podiatry care to underserved populations.

c. Mohammed Gharaati, Administrator at Stevenson Surgery Center, submitted a letter dated June 14, 2016, in support of petitioner's request for early termination of

probation. Petitioner is currently an active surgeon at Stevenson Surgery Center where he performs an average of three to four surgeries per week. Gharaati describes petitioner as someone who is careful, thorough, and a team player. Gharaati states that facility staff has told him that they would recommend petitioner to their parents.

Petitioner's evidence

8. Petitioner has learned from his mistakes. As a result of his disciplinary matter petitioner realized that he needed to improve his record-keeping system, and he has used his time on probation to achieve this goal. While on probation petitioner transitioned to electronic medical records. His new motto is "it's better to be thorough and careful then to have to go back and fix it."

9. Petitioner is currently in private practice in San Jose. He performs about three to five surgeries per week.

10. Petitioner wishes to end his probation in order to expand his practice. Currently, due to his status as a probationer, he is restricted from serving on certain insurance panels. He is particularly interested in serving underprivileged client groups. Petitioner does not believe he needs further restrictions and/or monitoring. Petitioner also wants to terminate his probation early to save himself the time and expense of probation. Petitioner wishes to use as much of his income as possible to support his two children.

11. Petitioner's testimony was credible and candid in all respects.

LEGAL CONCLUSION

The burden of proof in this matter is on Petitioner to show by clear and convincing evidence that his term of probation should end before its scheduled time or be modified. Business and Professions Code section 2307, subdivision (e), provides that in considering a petition for reinstatement or modification of penalty, "all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the petitioner's activities during the time the certificate was in good standing and the petitioner's rehabilitative efforts, general reputation for truth, and professional ability" may be considered.

Pursuant to the Factual Findings 4 through 11, it is found that petitioner has demonstrated good cause to grant his petition for penalty relief – termination of probation under Business and Professions Code section 2307 in that he has demonstrated that he is safe to practice podiatry without restriction.

ORDER

The petition of Nguyen Ky, DPM, Doctor of Podiatric Medicine License No. E 4689, for termination of probation, is hereby granted.

DATED: September 19, 2016

DocuSigned by:
Diane Schneider
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DIANE SCHNEIDER
Administrative Law Judge
Office of Administrative Hearings